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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of

Revision of the Commission's Rules to Ensure
Compatibility with Enhanced 911 Emergency
Calling Systems

CC Docket No. 94-102
RM-8143

MEMORANDUM OPINION AND ORDER

Adopted: January 28, 2000

Released: February 1, 2000

By the Chief, Policy Division, Wireless Telecommunications Bureau:

I. INTRODUCTION AND BACKGROUND

1. On December 18, 1998, the Wireless Telecommunications Bureau (Bureau) released a Declaratory Ruling (*California Declaratory Order*) to clarify certain aspects of the Commission's rules governing the wireless Enhanced 911 (E911) service.¹ The ruling was requested by the State of California 911 Program Manager (California) to determine whether California met certain conditions under the Commission's rules to require wireless carriers to transmit Phase I location data with 911 calls to the Public Safety Answering Point (PSAP) requesting Phase I service, as set forth by the Commission in Orders adopted in the E911 rulemaking proceeding.² In the *California Declaratory Order*, the Bureau held, *inter alia*, that wireless carriers are required to provide Phase I service under the E911 rules regardless of whether the State adopts statutes that provide immunity from liability for E911 service or that reimburse carriers for the cost of E911 liability insurance policies.³

2. On January 19, 1999, Omnipoint Communications, Inc., (Omnipoint) filed a Petition for

¹ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, Declaratory Ruling, DA 98-2572, released December 18, 1998 (*California Declaratory Order*).

² Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, RM-8143, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676 (1996) (*E911 First Report and Order*), adopting 47 C.F.R. § 20.18; Memorandum Opinion and Order, 12 FCC Rcd 22665 (1997) (*E911 First Reconsideration Order*).

³ *California Declaratory Order*, DA 98-2572, rel. Dec. 18, 1998, at 3-9 (paras. 7-24).

Reconsideration and Clarification of the *California Declaratory Order*.⁴ For the reasons discussed below, we dismiss the petition as moot.⁵

II. DISCUSSION

3. Omnipoint argues that, in the *California Declaratory Order*, the Bureau contradicted the E911 cost recovery rule in former Section 20.18(f) of the Commission's Rules when the Bureau ruled that a State is not required to provide protection for wireless carriers from E911 liability or to provide for their recovery of the costs of liability insurance before the carriers can be required to provide E911 service.⁶ Omnipoint requests that the Bureau clarify the rule to provide that, if no State immunity or insurance cost recovery is available, the Commission does not require wireless carriers to provide E911 service unless the State's cost recovery mechanism affirmatively addresses E911 liability in a reasonable manner.⁷ We find that Omnipoint's petition and the clarifications it requests are moot in light of developments occurring since the petition was filed.

4. Federal legislation was enacted on October 26, 1999, that addresses the issue presented by Omnipoint in its petition with respect to a State's requirement to provide liability protection on behalf of wireless carriers subject to the E911 rules. Specifically, Congress adopted the Wireless Communications and Public Safety Act of 1999 (911 Act) that, as pertinent, requires States to provide wireless carriers involved in the transmission of 911 and E911 calls with liability protection to the same extent the State provides protection with respect to wireline 911 services.⁸ The Commission recently relied on the 911 Act in the *E911 Second Reconsideration Order* released on December 8, 1999, to deny as moot similar requests from wireless carriers that the Commission require States to adopt provisions that protect wireless carriers from E911 liability.⁹

5. Furthermore, the Commission in the *E911 Second Reconsideration Order* modified the cost recovery rule in former Section 20.18(f) of the E911 rules to eliminate the requirement that a mechanism for the recovery of the carrier's E911 costs be in place as a prerequisite to a PSAP requesting, and the carrier providing, E911 service.¹⁰ As a result, States or localities may choose to adopt mechanisms

⁴ Omnipoint Petition for Reconsideration and Clarification, filed Jan. 19, 1999 (Omnipoint Petition).

⁵ On January 27, 2000, the Bureau released an Order granting the request of United States Cellular Corporation (USCC) to withdraw an Application for Review of the *California Declaratory Order* that USCC filed on January 19, 1999. Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Order, DA 00-128, released Jan. 27, 2000.

⁶ Omnipoint Petition at 1-4, n. 2, citing former 47 C.F.R. § 20.18(f), revised as 47 C.F.R. § 20.18(j).

⁷ Omnipoint Petition at 4.

⁸ Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, enacted Oct. 26, 1999, at Section 4 (911 Act).

⁹ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Second Memorandum Opinion and Order, FCC 99-352, released Dec. 8, 1999, at 41-43 (paras. 106-108) (*E911 Second Reconsideration Order*).

¹⁰ *Id.*, at 8-9 (paras. 19-23) and Appendix B, modifying 47 C.F.R. § 20.18(j).

or other approaches for carrier cost recovery and continue to implement existing mechanisms, but they are not required to do so in order for a wireless carrier to be obligated to initiate E911 service. Thus, the E911 rule that is the subject of Omnipoint's petition and the request to establish the extent States are required to provide mechanisms for carriers to recover E911 costs has been modified to eliminate the requirement that States adopt any cost recovery mechanism for wireless carriers. We find, therefore, that the recent changes in the applicable law and the Commission's E911 rules since Omnipoint filed its petition for reconsideration and clarification of the *California Declaratory Order* render the petition moot and subject to dismissal.

6. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended at 47 U.S.C. §§ 154(i) and 155(c), and the authority delegated under Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331, the Petition for Reconsideration and Clarification filed by Omnipoint Communications, Inc., on January 19, 1999, **IS DISMISSED AS MOOT.**

FEDERAL COMMUNICATIONS COMMISSION

Kris Monteith, Chief
Policy Division
Wireless Telecommunications Bureau